SCHEDULES TO THE ACT

The First Schedule - Where the Director (Discipline) is of the opinion that member is

Guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline.

PART I - Professional misconduct in relation to Chartered Accountants in practice

A Chartered Accountant in practice is deemed to be guilty of professional misconduct if he:

Clause (1)

Allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

Clause (2)

pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services to time in or outside India;

Explanation - In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part.

Clause (3)

Accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute: Provided that nothing herein contained shall be construed as prohibiting a member 'from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part.

Clause (4)

Enters into partnership, in or outside India, with any person other then Chartered Accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under close (V) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

Clause (5)

Secures either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to25 a Chartered Accountant, any professional business ; Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part.

Clause (6)

Solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means ; Provided that nothing herein contained shall be construed as preventing or prohibiting -

(i) Any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice ; or

(ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

Clause (7)

"Advertises his professional attainments or services, or uses any designation or expressions other than the Chartered Accountant on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council Provided that a member in practice may advertise through a write up, setting out the service provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.

Clause (8)

Accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been Issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

Clause (9)

Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956, In respect of such appointment have been duly complied with".

Clause (10)

"Charges or offers to charge, accepts or offers to accept In respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulations made under this Act."

Clause (11)

Engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage ; Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (Not being managing director or a whole time director) unless he or any of his partners is Interested in such company as an auditor."

General Resolution

(A) Permission granted generally - "Members of the Institute in practice be generally permitted to engage in the following categories of occupations, for which no specific permission from the Council would be necessary in individual cases:

1. Employment under Chartered Accountants in practice or firms of such chartered accountants.
2. Private tutorship
3. Authorship of books and articles.
4. Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
5. Attending classes and appearing for any examination.
6. Holding of public elective offices such as M.P., M.L.A. and M.L.C.
7. Honorary office leadership of charitable-educational or other non-commercial organisations.
8. Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
9. Part-time tutorship under the coaching organisation of the Institute,
10. Valuation of papers, acting us paper-setter, head-examiner or a moderator, for any examination.
11. Editorship of professional journals.
12. Acting as Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible.

Specific Resolution –

"Members of the Institute in practice may engage in the following categories of business or occupations, after obtaining the specific and prior approval of the Council in each case:

1. Full-time or part-time employment in business concerns provided that the member and/or his relatives do not hold "substantial interest" in such concerns".
2. Full-time or part-time employment in non-business cc concern.62
3. Office of managing director or a whole-time director o a body corporate within the meaning of the Companies Act, 1956.
4. Interest in family business concerns (including such interest devolving on the members as a result of in inheritance/succession / partition of the family business) or concerns in which interests has been acquired as a result of relationships and in the management of which no active part is taken.
5. Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
6. Interest in an educational institution.
7. Part-time or full-time lectureship for courses other than those relating to the Institute's examinations conducted under the auspices of the Institute or the Regional councils or their branches.
8. Part-time or full-time tutorship under any educational institution other than the coaching organization of the Institute.
9. Editorship of journals other than professional journals.
10. Any other business or occupation for which the Executive Committee considers that permission may be granted.

Clause (12)

"Allows a person not being a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

PART II - Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person

Clause (1)

Pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him;

Clause (2)

accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he

Clause (1)

Not being a fellow of the Institute, acts as a fellow of the Institute;

Clause (2)

Does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director(Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

Clause (3)

While inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV- Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he

(1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

These clause (1) & (2) are self explanatory and any of the member of the Institute is found guilty by any civil or criminal court and prosecuted for an imprisonment in an offence involving moral turpitude or his acts bring disrepute to the profession or the Institute, irrespective of the fact whether such acts are related to profession or not, such member will be deemed to be ***guilty of other misconduct in Part IV of Schedule I***.

The important point to note is that if imprisonment tenure exceeds six months, this case will be covered in the clause of Part III of Schedule II.

The Second schedule - Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the second schedule or in both the Schedule, he shall place the matter before the Disciplinary Committee.

Part I - Professional misconduct in relation to chartered Accountant in practice

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he

Clause (1)

"Discloses Information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force".

Clause (2)

"If he certifies or submits in his name or in the name of his firm,a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee In his firm or by another chartered accountant in practice".

Clause (3)

"Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast".

Clause (4)

Expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

Clause (5)

Fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement not misleading where he is concerned with that financial statement in a professional capacity;

Clause(6)

"Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity".

Clause (7)

Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

Clause (8)

"Fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion".

Clause (9)

"Falls to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances".

Clause (10)

Fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he

Clause (1)

Contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council;

Clause (2)

Being an employee of any company, firm or person, discloses confidential Information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer;

Clause (3)

Includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline. Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

Clause (4) Defalcates or embezzles money received in his professional capacity.

Part III - Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other mis- conduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months. Imprisonment awarded for a term exceeding six months in any civil/criminal matter treated asa major offence under 'other misconduct' is included in this Schedule.

Refer Clause 1 of part IV of Schedule I.